

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Cross Plains, Texas, et al.))

MM Docket No. 98-198
RM - 9304

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

STATEMENT FOR THE RECORD

1. WBAP/KSCS Operating, Ltd. ("WBAP") and Blue Bonnet Radio, Inc. ("BBRI"), by its counsel, submit this "Statement for the Record" in order to clarify a statement made by WBAP/BBRI in its Counterproposal of December 21, 1998. At paragraph 4, pp 3-4, the following statement was made -- "WBAP/BBRI hereby states that should the Commission substitute Channel 277C for Channel 277 C2 and change the community of license from Commerce to Allen, WBAP will file an application at a new transmitter site to implement the change and will expeditiously construct the facility if authorized to do so." This statement is true and was intended to reflect the expectation that WBAP will exercise its option to purchase KEMM subject to FCC consent and thereby become the licensee soon after the Commission grants the Counterproposal. As the licensee, WBAP will file the application to relocate the transmitter site and increase the facilities to serve Allen. However, this statement did not cover the unlikely possibility that WBAP does not become the licensee. In that event as the licensee BBRI would file the application to serve Allen and construct the facility.¹

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1. WBAP/BBRI recognizes that this matter was raised in Reply Comments submitted jointly by Gulfwest Broadcasting Company and Sonoma Media Corporation. WBAP/BBRI do not seek leave to file a response to that pleading at this time. However, WBAP/BBRI believe (continued...)

2. The requirement of a continuing expression of interest is a matter which stems from Section 307(b) of the Communications Act of 1934, as amended wherein it states: "In considering applications for license, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same." (Emphasis added). To implement this statutory provision, the Commission requires the filing of a continuing expression of interest in paragraph 2 of its Appendix to the Notice of Proposed Rule Making wherein it states: "[i]t (the proponent) should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly."

3. Certainly, there is no doubt that the "demand" for a station to serve Allen has been expressed as contemplated by Section 307(b) and the proponent, WBAP, has stated its present intention to apply and construct. BBRI has the same intention should it remain the licensee and that intention was expressed in note 2 of the Counterproposal wherein BBRI stated that in the unlikely event BBRI remains the licensee it will reimburse all the affected stations. That being the case the Commission should have no reason to doubt that under those circumstances, BBRI would also have the present intention to file an application and construct the facility. Accordingly, BBRI hereby states for the record that should BBRI remain the licensee due to WBAP's failure to acquire KEMM, then BBRI will file an application to serve Allen and, if authorized, build the station promptly.

1. (...continued)

that a clarification is appropriate and, for the reasons to be provided, proper for consideration at this stage. To the extent the Commission determines that it must grant leave to accept the clarification of BBRI, WBAP/BBRI seek leave to file this statement. See Section 1.415(a) of the Commission's Rules.

4. The Commission should not view this statement as late filed and subject to its policy of strict scrutiny for Counterproposals. To do so would elevate form over substance where the Commission has the requisite expression of interest from the proponent WBAP and where BBRI has already indicated that BBRI would implement the action should WBAP not become the licensee. Thus the Commission has enough assurance from the proponents that it can safely proceed in evaluating the merits of the Counterproposal.

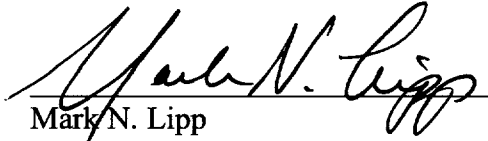
5. Nevertheless, WBAP/BBRI wishes to also point that, in considering this Statement for the Record, no other conflicting proposal will be adversely affected. The original petitioner, ALALATEX, has apparently failed to file its expression of interest in applying for Channel 245C3 at Cross Plains, Texas even though it was willing to provide a statement for WBAP/BBRI's filing that ALALATEX agreed to accept Channel 290C3 for consideration at Cross Plains instead. Nevertheless, an alternate channel is available at Cross Plains.

6. In addition the Counterproposal of Gulfwest Broadcasting Company and Sonoma Media Corporation contains numerous defects and should not be accepted. See "Joint Reply Comments" filed in part by WBAP/BBRI. Therefore, no other acceptable conflicting proposal would be prejudiced thereby. See Boalsburg, PA et. al. 7 FCC Rcd 7653 (1992); Scottsboro, Alabama, et. al. 6 FCC Rcd 6111 (1991).

7. Accordingly, to the extent the Commission believes it is necessary to have a clarification of an expression of interest from BBRI, BBRI hereby requests leave to submit this Statement for the Record.

Respectfully submitted,

WBAP/KSCS OPERATING, LTD.
BLUE BONNET RADIO, INC.

A handwritten signature in black ink, appearing to read "Mark N. Lipp", written over a horizontal line.

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January 20, 1999

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy & Bacon, do hereby certify that I have on this 20th day of January, 1999 caused to be mailed by first class mail, postage prepaid, copies of the foregoing **"Statement for the Record"** to the following:

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